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FEDERAL TRADE COMMISSION

16 CFR Part 436

Disclosure Requirements and Prohibitions Concerning Franchising

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Final rule amendments.

SUMMARY: The FTC announces revised monetary thresholds for three exemptions from the Franchise Rule. The FTC is required to adjust the size of the monetary thresholds every fourth year based upon the Consumer Price Index for all urban consumers published by the Department of Labor.

DATES: This final rule is effective on July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Craig Tregillus, Franchise Rule

Coordinator, Division of Marketing Practices, FTC, 600 Pennsylvania Avenue, NW,

Washington, DC 20580, (202) 326-2970, ctregillus@ftc.gov.

SUPPLEMENTARY INFORMATION:

The FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising" (Franchise Rule or Rule)¹ provides three exemptions based on a monetary threshold: the "minimum payment exemption,"² the "large franchise investment

¹ 16 CFR Part 436.

² 16 CFR 436.8(a)(1).

exemption”³ and the “large franchisee exemption.”⁴ The Rule requires the Commission to “adjust the size of the monetary thresholds every fourth year based upon the . . . Consumer Price Index for all urban consumers [CPI-U] published by the Department of Labor.”⁵ This requirement, added by the 2007 amendments to the Rule, took effect on July 1, 2007, so that franchisors would have a one-year phase-in period within which to comply with the amended Rule’s revised disclosure requirements before the July 1, 2008, final compliance deadline.⁶

As required by the Rule, the Commission revised the three monetary thresholds to reflect inflation in the CPI-U from 2007 through 2011 of 8.49 percent.⁷ The adjusted thresholds, which took effect on July 1, 2012, raised the minimum payment exemption from \$500 to \$540; the large franchise investment exemption from \$1 million to \$1,084,900; and the large franchisee exemption from \$5 million to \$5,424,500.⁸

We base the exemption monetary thresholds that will take effect on July 1, 2016, on the increase in the CPI-U between 2007 and 2015. During this period, the annual average value of the Consumer Price Index for all urban consumers and all items increased by 14.31 percent –

³ 16 CFR 436.8(a)(5)(i).

⁴ 16 CFR 436.8(a)(5)(ii).

⁵ 16 CFR 436.8(b).

⁶ 72 FR 15444 (Mar. 30, 2007).

⁷ 77 FR 36149, 36150 (June 18, 2012).

⁸ *Id.*

from an index value of 207.342 to a value of 237.017.⁹ Applying the percentage increase to the three monetary thresholds increases the thresholds as follows:

⁹ Bureau of Labor Statistics, CPI Detailed Report: Data for February 2016, Table 24, p. 72, available at <http://www.bls.gov/cpi/cpid1602.pdf>.

Exemption	2007 Base	Adjusted 2016 Threshold
Minimum Payment	\$500	\$570 ¹⁰
Large Franchise Investment	\$1,000,000	\$1,143,100
Large franchisee	\$5,000,000	\$5,715,500

Because the calculation of these thresholds is purely ministerial in nature and implements the Rule’s mandatory adjustment mechanism, these adjustments are exempt from the rulemaking procedures specified in section 18 of the FTC Act.¹¹ In addition, the Commission has determined that notice and comment are unnecessary under the Administrative Procedure Act (APA) for the same reason. The Commission, therefore, has omitted notice and comment for good cause as provided by section 553(b)(B) of the APA.¹² For this reason, the requirements of the Regulatory Flexibility Act also do not apply.¹³ Accordingly, the adjusted thresholds will take effect on July 1, 2016.

¹⁰ The Commission has rounded this figure from \$571.55 to \$570 for compliance clarity and simplicity.

¹¹ See 15 U.S.C. 57a(d)(2)(B); 16 CFR 1.15(b) (providing that non-substantive amendments to trade regulation rules are exempt from the rulemaking procedures of Section 18 of the FTC Act).

¹² 5 U.S.C. 553(b)(B) (providing that “good cause” exists to forego notice and comment when public comment is unnecessary).

¹³ 5 U.S.C. 603 and 604 (no regulatory flexibility analyses required where the APA does not require public comment).

List of Subjects in 16 CFR Part 436

Advertising, Business and industry, Franchising, Trade practices.

Rule Amendments

For the reasons set out in the preamble of this document, the Federal Trade Commission amends 16 CFR Part 436 as follows:

PART 436—DISCLOSURE REQUIREMENTS AND PROHIBITIONS CONCERNING FRANCHISING

1. The authority citation for part 436 continues to read as follows:

Authority: 15 U.S.C. 41-58.

2. Amend § 436.8 as follows:

- a. In paragraph (a)(1), remove “\$540” and, in its place, add “\$570”;
- b. In paragraph (a)(5)(i), remove both references to “\$1,084,900” and, in their place, add “\$1,143,100”; and
- c. In paragraph (a)(5)(ii), remove “\$5,424,500” and, in its place, add “\$5,715,500”.

By direction of the Commission.

Donald S. Clark
Secretary.

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